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LLM DISSERTATION: The World Trade Organisation and Developing  
Countries, with Specific Reference to South Africa

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***To my mother, Mrs. Theresa Gyamfuah Asamani  
and my father, Mr. Joseph Asamani***

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## **CHAPTER 1: INTRODUCTION**

The focus of this dissertation is upon the role of economic relations in the international legal system, with special emphasis on the newly established World Trade Organisation (Hereinafter, WTO) and its implications for developing countries. This organisation has replaced the General Agreement on Tariffs and Trade (Hereinafter, GATT) as the overall mechanism for regulating international trade. The trade policies of the WTO will be assessed in the light of how they affect developing countries in global trade. Issues of importance to be reviewed include the aims and principles of the WTO, factors leading to its institutionalisation and the improvements it makes upon the GATT, with due regard to the manner in which its laws affect the relationship between developed countries and developing ones in multilateral trade.

In addition to these, fundamental trade policies of the WTO, such as the provision of measures in favour of least developed countries (Hereinafter, LDCs), specifically, the Most Favoured Nation principle and the granting of other forms of preferential treatment from the more powerful trading nations of the first world to the nations of the third world will be reviewed. The liberalisation of multilateral trade is another WTO policy, which will also be examined, with due regard to potential LDC benefits in global trade. GATT highlighted some of these principles over the past few decades. How successful have they been in ameliorating the trade patterns and economic conditions of LDCs in international trade, as envisaged by this organisation? What recommendations, if any, can be made to ensure a better realisation of these policies in developing countries such as South Africa, who are seeking to integrate into the international trading system, after many years of

political and economic isolation? Is the WTO altogether positive or could it have some negative significance which could be possibly rectified? The desirability of a free trade regime and the rationale behind such liberalisation for African countries will thus be discussed.

In examining these policies, references will be made to the Bretton Woods institutions, that is, the International Monetary Fund (Hereinafter, IMF) and the World Bank. The information provided by these institutions in some of their reports on LDCs will also be referred to. The relevance of these two international economic institutions lies in the fact that, since their establishment in 1944, (in Bretton Woods, New Hampshire, United States of America; hereinafter USA) they have worked alongside the GATT/WTO in the maintenance of a stable international order within the global economy which regulates world markets and ensures stability. Established after the period of the Great Depression, in the 1930s when the world economy was afflicted by severe economic problems such as thousands of bank failures (which rendered bewildered depositors penniless), idle factories and excessive deterioration in the shipping industry, these three mechanisms have always sought to assist countries in the enhancement of their economic and developmental objectives. The IMF carries out this task in its capacity as a co-operative institution which one hundred and eighty one countries have voluntarily joined for mutual consultations which will lead to a stable system of buying and selling their currencies so that payments between countries can effectively take place and without any problems. Contrary to widespread perception that this institution operates as a rather authoritative and disapproving political institution, imbued with a missionary zeal for fiscal rectitude,

that somehow compels its members to tread the path of economic austerity, the IMF persuades members to utilise prudent measures in the reformation of sound economic policies and not utilise its financial resources on useless military ventures, for instance. For the World Bank, this aim of assisting nations and its people in improving prosperity and their quality of life is achieved through the granting of loans to economies in need. For instance, after the Second World War (which lasted from 1939 to 1945), this bank granted loans to help finance and reconstruct the war-ravaged economies of Europe and Japan. Today, it also lends money to developing countries of Africa, Asia, Central Europe, Latin America, the Middle East and the former Soviet Union. These loans are centered on providing financial investment and economic growth through infrastructure projects, economic reform packages and technical assistance, that is, expert advice to help governments make specific sectors of their economies more efficient and relevant to national development goals. It carries out these functions through a network of its subsidiary banks, such as the International Bank for Construction and Development and the International Finance Corporation. Consequently, the trade performance of the world's trading nations, especially LDCs, who are often in financial need, have at one time or the other, been affected by certain rules of IMF and World Bank.

Therefore, the ensuing discussion will explore the new global system governing international trade under the WTO and how some of its principles and specialised agreements are likely to impact developing countries in the pursuit of their economic goals and in their trading activities with industrialised ones. A conclusion will finally be made as to whether the WTO is in fact desirable for LDCs in the immediate future and in



the long term.

## **CHAPTER 2: WORLD TRADE ORGANISATION**

On January 1st 1995, the WTO was established, as the multilateral institution responsible for the overall regulation of international trade and for the administration of agreed-upon global trade rules between Member states. In this respect, this organisation is a substitution to the GATT. It is also a consequent result of the Uruguay Round of multilateral trade negotiations, which was organised under the auspices of the GATT from September 1986 in Punta del Este in Uruguay to April 1994 in Marrakesh, Morocco. This Round, the eighth of a series of GATT negotiations, focused on finding meaningful solutions to certain problems in international trade, such as the disagreement between industrialised countries and developing ones over whether to liberalise trade in services, the removal of trade barriers and abandoning protectionist measures in multilateral trade, in accordance with GATT provisions. It extensively covered trade in goods and in other areas, such as services as indicated above, trade-related intellectual property rights and investment. The Round further strengthened international trade rules and after being concluded at the end of 1993, it resulted in the formation of the WTO. This occurred after agreements to this institution had been signed in March 1994 in Marrakesh. Based in Geneva, it is essentially a continuation of the GATT, which it seeks to improve upon .

From the aforementioned, the most important feature of GATT 1994 which was a culmination of the Uruguay Round, was the emergent WTO, “the most comprehensive since the 1948 GATT was concluded”.<sup>1</sup> This regulation is obviously a single institutional framework which encompasses the GATT, as well as every agreement and legal

instrument negotiated in the Uruguay Round, GATT 1994 and a wide variety of agreements covering trade in goods. Furthermore, the WTO makes extensive provision for trade in new areas, which were not covered by GATT and improvements on certain sectors, which were already in existence. Examples are the General Agreement on Trade in Services (or GATS), the Agreements on Trade-Related Aspects of Intellectual Property Protection (or TRIPs), Agriculture, the Understanding on the Dispute Settlement (DSU), the Trade Policy Review Mechanism (TPRM), Technical Barriers to Trade and on Phytosanitary Measures. A number of Ministerial Decisions and Declarations have also been established to supplement the agreements reached. In addition to these, a series of provisions can accommodate the use of trade-related measures needed for environmental purposes, including measures pursuant to Multilateral Environmental Agreements (MEAs). For instance, this organisation has for the first time in international trading relations, set up a special Committee on Trade and the Environment (CTE) whose special task is to ensure the maintenance of environmental standards in the course of global trade.<sup>2</sup> Apart from its existence as an organisational mechanism for the implementation of the wide spectrum of the negotiations, the WTO significantly symbolises institutional and policy responses to a series of international economic events, such as trade and investment, examples of which are the increased participation of developing countries in world trade and universal liberalisation and development strategies.<sup>3</sup>

For South Africa and all LDCs, the WTO, to a very large extent, has economic and developmental implications. Thus, according to a Report on the WTO and on the

Implementation of the Uruguay Round, "The agreement, the aim of which is to create a more open international trading environment, has far-reaching implications for the globalisation of the world economy and should lead to new opportunities for less developed countries".<sup>4</sup> In the subsequent chapters of this paper, discussions will be made as to whether the WTO's significance for this group of countries is indeed, absolutely positive or whether there are some negatives effects as well.

## **2.1 Historical Background and Development**

The genesis of the WTO dates back to 1947, when there are a series of negotiations in Havana for the creation of an International Trade Organisation (Hereinafter, ITO).<sup>5</sup> This would have constituted the third pillar to the IMF and the World Bank of a new international economic order. Before the termination of the Second World War, the creation of the ITO as overall regulation affecting international trade was deemed to be necessary. This owed to general apprehensions on the part of economists and policy makers that unprecedented degrees of recession, unemployment and repercussions on primary commodity prices would characterise the aftermath of the Second World War. On the contrary, the post war era, particularly, the first twenty five years witnessed a tremendous boom in full employment and steady growth. In addition to this, there was a refusal on the part of the USA to accede to the ITO treaty. As a result of these, the ITO was never created.

However, it must be noted that there was a survival of a portion of the ITO treaty, which consisted of the laws regulating the stipulation of tariff procedures and how they should

be enforced in global trade. Thus, Hudec states that “The ITO Charter was never ratified. The only part of the grand design which survived was the General Agreement on Tariffs and Trade, a temporary trade agreement containing most of the ITO’s trade policy and a preliminary version of the nullification and impairment clause”.<sup>6</sup> Similarly, Eisenberg opines that “... since the Congress of the United States had failed to accept the ITO Charter by 1950, the GATT became, by default, the general regulatory institution for world trade, filling the gap left by the demise of the ITO”.<sup>7</sup> Even though it has not enforced each and every agreement contained in the original ITO charter, GATT has implemented many stipulations such as the promotion of fair standards and principles for the enhancement of economic development in various nations, which were contemplated by this charter.<sup>8</sup> GATT, a minor component of the ITO has thus been of vital importance for many years as the ITO has transformed it into an international organisation which has regulated trade relations between many countries. Nevertheless, as the GATT was initially intended to be an interim agreement, nations, with the exception of Liberia and Haiti, apply its principles on a provisional basis.<sup>9</sup>

From its inception in 1947 to the creation of the WTO in 1995, there have been a series of multilateral trade negotiations between countries under the auspices of GATT. These negotiations which have been termed as ‘rounds’ have often centred on strictly enforcing free trade principles of GATT through tariff dismantlement and the removal of non-tariff barriers, thereby, abandoning the practice of protecting local industries from foreign competition, as has sometimes occurred in international trade. Non-tariff barriers are laws, regulations, policies and practices of a government other than an import duty, that

have a restrictive effect on trade.<sup>10</sup> (Therefore, secrecy and lack of information about trade barriers have been categorised as a nontariff barrier. Dam thus describes these as constituting an “invisible tariff”.<sup>11</sup>) For example, after the conclusion of the European Union (Hereinafter, EU) in 1957 by Belgium, Netherlands and Luxembourg under the Treaty of Rome, (There are now eleven members of this Union and membership is open to any European state) its notorious Common Agricultural Policy (Hereinafter, CAP) was adopted. According to the CAP, locally produced agricultural goods were subsidised, that is, agricultural producers were granted state-sponsored financial compensation with respect to these goods. Consequently, exporters of such products into any EU territory were disadvantaged, as local farmers sold their goods at relatively cheap prices without suffering any losses because the subsidies operated to offset any such loss which would have otherwise occurred. The objectives of the CAP are defined in Article 39 of the Treaty of Rome, which has among these aims, “the increment of agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, in particular, labour; to stabilize markets and to ensure the stability of supplies”.

These aims of the CAP were expanded and strengthened at the Stressa Conference in 1958, when the then EU members stated that “... the CAP could not be autarkic, but must protect the internal market against distortion by outside competition”.<sup>12</sup> These policies were not peculiar to the EU, for similar rules prevailed in the USA, Canada and Japan, and had similar impacts in agricultural trade. There was also the variable import levy, which is a duty imposed by EU on importers and which varies at any time, so as to make

the selling price of imports into the European Community market at a level that will, in general, protect domestic agricultural products from foreign competition. Certain writers have commented that the European Economic Community's (Hereinafter, EEC) agricultural policy "which assures stability of domestic markets at the expense of instability on world markets, reflects a conflict between its agricultural objectives and its general commercial objectives".<sup>13</sup> In effect, the EEC's policies in this sense are seen as being diametrically opposed to its obligations under GATT, even though writers such as Jackson opine otherwise.<sup>14</sup> Due to the enforcement of these regulations, exporters of agricultural products, especially, African states, who traded with EU members, under GATT arrangements and basically depended on trade in these goods, suffered a great deal.

Another example of trade-restrictive practices lay in the service and high technology sectors which have become primary growth areas for the advanced economies and a growing number of newly industrialised economies (Hereinafter, NIES) such as those in the Far East. For instance, according to a voluminous trade report produced by the United States Trade Representative in 1983 on non-tariff barriers,<sup>15</sup> it was noted that in Japan, domestic firms are accorded more competitive advantage over foreign firms when it comes to contract binding in the engineering, building and construction industries. Korea imposes protectionist policies in certain insurance sectors. In the banking industry, the South American state of Brazil exercises strict measures, which focus on the preventing the creation and expansion of foreign banks.

Furthermore, among trade barriers, which often function as disguised, protective devices, Japan is said to have exercised unnecessarily stringent consumer protection standards over the years. For instance, this country required that imported canned goods into its territory must have elucidated the label the weight of the contents in metric units and no other.<sup>16</sup> These and other acts of protectionism intensified in international trade especially in the 1980s, despite the existence of the GATT which sought to prohibit such practices.

From the above, it is not surprising that international trade has sometimes resulted in a great deal of tension between the world's industrialised countries and LDCs, the main reason being that the latter always view the former as deriving the potential gains of world trade. LDCs also perceive developed countries as blocking their market access, to the former's detriment in trade. Such conflicts explain the series of GATT rounds of multilateral trade talks, organised in the sixties, seventies and eighties, which have always centred on finding ways and means to achieve a truly equitable international trading system.

For instance, from 1961 to 1962, the Dillon Round was negotiated in an effort to counter the threats posed by EEC's CAP system which, as a matter of fact, had worsened in the 1960s and the 1970s.<sup>17</sup> Due to the inadequate results that were achieved from this round and the fact that excessive tariff measures continues to be imposed by countries in multilateral trade, there were more rounds of trade negotiations organised under GATT. An example was the Tokyo Round<sup>18</sup> which was conducted from 1973 to 1979 in order to resolve the growing economic interdependence among national economies on the one



hand, and the increasing tendency of governments to intervene in their economies (to enhance economic objectives and domestic welfare) on the other. However, it has been perceived that although this round represented the most comprehensive and articulate negotiation so far, it left untouched diverse complex issues such as agriculture and services, particularly finance, telecommunications and high technology industries that have since assumed a significant role in international economic relations.

Further changes characterised the global pattern of international trade in the 1980s. This was partly due to renewed protectionism in difficult countries, which stemmed from domestic economic concerns, increasing competition among major multinational companies and strategic trade policies of certain countries. It also important to note that the rapid boost in trade competitiveness of Japan and the various NIEs placed severe strains on the multilateral trading system and added to the debate on its future.<sup>19</sup> The situation as it then was, could be seen as not being in strict conformity with the free trade principles of the international economic system, as enshrined in the GATT. Hence, after more than seven years of rigorously intensive debates, in September 1986, hundred members of the GATT launched a round of multilateral trade negotiations in Punta el Este, Uruguay, in order to find lasting solutions to these problems. These negotiations have come to be known as the Uruguay Round multilateral trade agreement and was the most detailed of all multilateral trading agreements since the GATT was concluded in 1947. Its end result was the creation of the WTO in 1995.

## 2.2 Key Principles, Fundamental Objectives and Function

As indicated earlier, the WTO centres on the promotion of free and fair trade between countries in the global economy, through the removal of unnecessary trade and nontariff barriers. By so doing, it adheres to the neo-liberalist school of economic thought, which believes that for the enhancement of global welfare, world trade should be increased tremendously. This can be achieved through the removal of domestic industry protection, so that other nations are able to make maximum benefit of their main exports, and the products, which they are able to produce the most and specialise in. One nation reduces trade barriers and can in turn expect similar treatment from another state. This applies to all countries in international trade, and the principle of reciprocity is hereby achieved.<sup>20</sup> In this way, nations make effective use of their competitive advantage, and there is effectiveness in international trade.

In adhering to this school of thought, the GATT/WTO opposes the structuralist/dependency doctrine which holds the belief that the criterion for the growth of economic development is the principle of protecting local industries from foreign competition, and ensuring state intervention in all manufacturing sectors. The government then becomes the main economic agent for the country, and through protectionism, a wealthy economy is supposed to have been achieved. South Africa adopted this principle for many years, until recently, when it joined the international trading order.<sup>21</sup> For the WTO, a free market system is the only way that a developed global economy can be achieved, and through its principles, such as the thorough liberalization agenda, this philosophy is reinforced.

The immediate task of the WTO is to implement the Uruguay Round agreement and beyond that, tackle any new areas not covered or covered adequately in the Uruguay Round. Today, the WTO monitors the trade relations of some one hundred and twenty countries over the world and seeks through its agreement , to create a more conducive environment for the promotion of international trade, apart from having developmental implications for LDCs.

Article 3, in adhering to this goal, makes provision for the functions of the WTO which are: To serve as the legal and institutional foundation of the multilateral trading system, to provide the principal contractual obligations determining how governments frame and implement domestic trade legislation and regulations. Then again, the WTO is also the platform on which trade relations among countries evolve through collective debate, negotiation and adjudication. It is further responsible for the administration and implementation of the multilateral and plurilateral trade agreements, which together make up the WTO, acting as a forum for multilateral trade organisations and seeking to resolve trade disputes. These tasks, it carries out by administering the Understanding on the Rules and Procedures governing the Settlement of Disputes as well as the Trade Policy Review Mechanism.

In carrying out these functions, the WTO adheres to its principal aim, which is the liberalisation of international trade through the dismantlement of tariffs, in accordance

with GATT 1947. This ideology encourages international economic activity between nations as a necessary condition for the stimulation of growth in national economies, and has been adopted since the initial formation of GATT. Thus, the international trading order seeks to safeguard the interests of exporters by ensuring that they are not subjected to arbitrary and excessive taxation on their goods. On the other hand, the interest of local manufacturers are also important in that foreign exporters must meet certain requirements, so that domestic firms are not thrown at a low competitive advantage. The WTO strikes a balance between these objectives in this sense.

As indicated in the earlier chapter, the WTO also oversees national policies and co-operates with other international institutions such as the IMF, the World Bank and the United Nations Conference on Trade and Development (Hereinafter, UNCTAD) in the process of global economic policy making.

### **2.3 Membership**

The one hundred and thirty governments, which accepted the Marrakesh Agreement of April 1994, are members of the WTO. These Member states comprise both industrialised states and states in the process of development. Consequently, the more advanced countries such as USA, Switzerland, Britain, Canada, Germany and Italy are parties. Similarly, developing nations such as African and Carribean states are also parties to the agreement, which established the WTO.

Contracting parties to the GATT 1947 will automatically become members of the WTO if

they assume the obligations provided for in all twenty nine separate agreements on goods, services and intellectual property protection, and submit schedules of concessions covering trade in goods (including both market access and subsidy commitments in the case of agricultural products) and services. From this perspective, the WTO differs from the GATT for unlike the latter, membership to the former entails being bound by all these agreements,<sup>22</sup> thereby ensuring a single undertaking approach and it departs from the GATT system of allowing members to accede to certain multilateral agreements only. In accordance with the WTO's aims of according LDCs preferential treatment so as to meeting their economic objectives however, these countries have been exempted from strictly abiding by all these obligations under these agreements. For instance, under the TRIPs, developed countries have one year to meet their obligations, developing countries have five years and least developed countries have eleven years, with the possibility of an extension.

With the existence of the Apartheid regime which prevailed in South Africa for many decades and the consequent international sanctions which were levied against it, this country has been isolated from world trade even though it was one of the original signatories to GATT. With the dismantling of its racist policies (in the early 1990s) which hitherto operated under Apartheid, this country has now had the chance to participate in the international trading regime. Having formally acceded to the WTO on the 2nd. of December, 1994 and ratified it under Section 231(4) of the South African interim constitution 1996, South Africa is bound by all WTO Agreements, which are thus valid in South African law. Parliamentary/legislative sovereignty still seems to exist, for parliament must however approve of this before this provisions can be incorporated South

African municipal law, since the executive negotiates such international treaties and the legislature functions to enact municipal law. So that there must be a parliamentary approval of the executive's act, otherwise the contrary would imply that the executive has powers to implement municipal laws in the land.<sup>23</sup> Thus, parliament has approved of WTO provisions which are legally valid in South African law.

## **CHAPTER 3: TRADE POLICIES OF THE WTO**

### **3.1 Most-Favoured Nation Principle and Non-Discrimination**

This principle, “a fundamental legal proposition of international trade law ... was the centre-piece of the GATT and it remains pivotal to the new regime of the WTO”.<sup>24</sup> The main idea behind this rule is to encourage non-discrimination, which is the cornerstone of the GATT/WTO and prohibits discrimination by states towards others with respect to imports of goods produced by other states and goods produced in the home market. For example, states are to accord equal treatment to all states in the course of international trade, and not treat some on more favourable terms than others. In addition to this, states are not expected to levy unnecessary taxes and resort to the imposition of conditions, which would serve as trade barriers and nontariff barriers to foreign exports. The contrary would imply denying market access to foreign producers, and thereby, violating the good principle of multilateral economic co-operation in global trade, and preventing states from making maximum use of their comparative advantage for one another’s benefit. This principle of non-discrimination is embodied in two fundamentally important concepts of international trade law, the general most favoured nation clause and the national treatment principle. Mc Rae thus states that “National treatment along with MFN constitute the principle of non-discrimination in international trade”.<sup>25</sup> Originally, MFN simply denoted equality of treatment with regard to market accessibility and this principle did not suggest equality of goods once the goods entered into the market place. Thus, MFN existed and not national treatment.<sup>26</sup>

### 3.2.1 General Most Favoured Nation Clause

The first axle of the discrimination rule, the general most favoured nation treatment clause, advocates that when a state grants advantages, privileges and favours to another country in terms of duties associated with importation and exportation, this same treatment must be accorded to other countries. Thus, Article I (1) states that :

“With respect to customs duties and charges of any kind imposed on or in connection with importation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation..., any advantage, favor, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties”.

In addition to this fundamental clause relating to this concept, other specific MFN clauses are found, for instance, in Articles III, paragraph 7 and V, paragraphs 2, 5 and 6 which touch on internal mixing requirements and transit of goods respectively. Article IV paragraph (b) relates to cinema films, under the same principle. Generally, there are variations in the wording of these clauses, but they all are all geared on requiring that goods of any contracting party be given no less favourable treatment than that given any other contracting party. Thus, all nations who are members of GATT/WTO are entitled to equal treatment in terms of tariffs and market access. For example, if state A grants some benefits to state B in the course of multilateral trade, state C is also to be accorded the



same benefit by state A, (provided that all these states are members of the GATT/WTO), the idea being that this organisation, even though it permits regional arrangements in some instances, is not meant to operate on a bilateral basis (as this could generally impede global trade), but as a multilateral forum.

For example, in the current WTO case involving USA, EU and Japan against Indonesia,<sup>27</sup> complaints of the three powers are based on the allegation that Indonesia's widely criticised car policy which grants tariff and tax concessions in favour of cars produced by the South Korean PT Timor Putra Nasional Company (which presently produces its "Timor" sedan in South Korea) amounts to discrimination against their cars, thus violating the general MFN clause. It seems that once a state is able to establish that the same treatment is being given to like goods from all states at a particular moment in the course of global trade, the fact that such treatment, tax, or otherwise is excessively stringent and amounts to a nontariff barrier, may be irrelevant. Jackson reasserts this view in discussing the EU's variable import levy scheme, which he believes to be consistent with GATT Article II.<sup>28</sup> (This Article permits taxes of this nature.) More importantly, the fact that this tax is levied on all importers of agricultural products to the EU makes invalidates any claim that this tax contradicts GATT norms.

### 3.1.2 National Treatment

The second component of this clause, the national treatment principle, outlaws discrimination between domestically produced goods and those which have been imported, since the opposite suggests that the country of import may be pursuing

protectionist measures, in aid of its firms, so as to avoid competition from foreign firms. This rule centres on fixing the same conditions for domestic goods as well as foreign imported goods, so that the latter are not discriminated against at the expense of the former.

Therefore, Article III(4) which prohibits more favourable treatment being accorded to a like product in the local market than an imported one, stipulates that :

“The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations, and requirements affecting internal sale, purchase, transportation, distribution or use”. Reaffirming this view, Hercules Booyesen states that in this clause, “a state promises to apply to another state and its citizens the most favourable import charges applicable to imported goods from other countries”.<sup>29</sup> Hence, levying a sales tax on imported goods while locally produced goods were not subjected to the same tax would be tantamount to non-discrimination and a violation of the national treatment principle. Furthermore, allowing domestic producers of alcoholic beverages to establish their own distribution schemes while requiring that imports of the like product be distributed through a state-managed scheme, would also be a violation of this principle.

Protectionist measures such as unnecessary internal tax and regulation affecting internal sales are governed by this principle, which forbids between foreign products and locally, produced goods. So that here, non-discrimination is sought to be promoted, as advocated

by this principle which abhors discrimination between domestic and foreign goods. Thus, in April 1949, a complaint brought by France against Brazil<sup>30</sup> for the latter's discriminatory internal taxes against imported articles at inordinately excessive rates for like domestic products, namely brandy and watch industry products, was after a series of lengthy and complicated consultations, held by the then GATT Dispute Settlement Panel in 1955, to contravene MFN Article III of the GATT. In effect, as part of the massive fiscal reform undertaken by the Brazilian government in 1956, "discrimination taxation was to be abolished in toto".<sup>31</sup>

### 3.1.3 Exceptions and Derogations

There are exceptions to these rules, however, as seen in the article XX exceptions to this agreement. Realising the need for countries to be at liberty, under the international law principle of national sovereignty, to design their peculiar national goals and policies which may be relevant to their particular developmental objectives (without interference from foreign countries), the GATT/WTO requires that under this section, nations can impose trade restrictions on foreign exporters if the imports of certain goods are potentially dangerous to their country's environment, for example. So that, the GATT/WTO Agreement on Sanitary and Phytosanitary Measures, for instance, empowers governments to regulate imports of goods which relate to food safety, animal and plant health. The General Agreement on Technical Barriers to Trade grants the right of state control over trade in certain substances such as paper and electrical instruments.

From these, it could be observed that in accordance with the principle of national

sovereignty, states are at liberty to ensure that certain environmental standards, which they deem to be necessary to their national welfare, could be insisted on, for the acceptance of particular exports from certain countries. This right is nonetheless absolute, for governments must demonstrate that these measures are indeed necessary for the protection of human, plant and animal welfare, and they should not “arbitrarily or unjustifiably discriminate between members where identical or similar conditions prevail”.<sup>32</sup> These restrictions must therefore be applied without discrimination.

The problem with this particular exception is that, certain countries, especially, the more powerful ones, could resort to disguised protectionism, and a violation of the extra territorial principle, for instance, rejecting foreign imports on the grounds that they do not meet its requisite environmental standard. This was exemplified in the US-Mexico Tuna Fisheries case,<sup>33</sup> where it was held that USA was free to protect its national environment, but that it was not justified in seeking to ensure that Mexican and Venezuelan exported tuna should be caught in a manner, so as to preserve the dolphin population in Mexican sea. In another case pending arbitration before the WTO Dispute Settlement, that is, the Shrimp Turtle case,<sup>34</sup> shrimps from Thailand, Malaysia, Indonesia and Singapore were rejected by USA’s authorities because they were not caught with turtle exclusion devices and hence, drowned turtles in the sea and territory of the exporters. If the WTO Dispute Settlement Panel decides in favour of the US, this could possibly mean that the US is justified in seeking the imposition on these four countries, of the need for them to ensure turtle conservation (while fishing for shrimps to be exported) in their territories. Even though the need to preserve turtles has been cited in the 1989 Conventions for the

Regulation of International Trade in Endangered Species (Hereinafter, CITES), it is difficult to also envisage how one state can decide on the national policies of others. The conditions for the prevalence of these restrictions under Article XX are thus essentially vital in international trade, for the health and environment of the country of import is what must be protected, and not the environmental welfare of the exporting country or the entire globe, because the principle of territorial sovereignty must also be respected.

### General System of Preferences (GSP)

It must be noted however that in certain situations, preferential treatment is permissible in international trade, implying that certain discriminatory practices, such as greater lengths of time to honour certain WTO obligations and also, being granted tariff concessions, may be legally carried out. This applies to developing countries, who, due to financial and developmental problems, may require such benefits from their more powerful trading partners, since they cannot compete on an equal footing with developing countries, due to economic imbalances. These benefits they receive, without granting anything in return, and in this sense, they could be said to be exempted from the obligation of reciprocity under the GATT.

The GSP originated as “an ex-gratia” favour from the industrialised countries to less developing ones, at the requests of the latter during all multilateral trade negotiations.<sup>35</sup> However, it achieved legal status in the Tokyo round when GATT established that through an Enabling clause, contracting parties could resort this principle without contravening GATT’s MFN policies. With regard to the issue of granting this treatment

to LDCs, there have been intense debates and disagreements. Three schools of thought, the liberal internationalist, extremists and the equitable internationalist school, exist in international trade with regard to this matter.

To the liberal internationalists such as Hudec and Wolf, the GSP seeks to undermine the foundation of multilateral trade, and is highly likely to destroy the world trading trading order if favourable concessions continue to be given to LDCs. From their perspective, “the unequal application of GATT trade rules, and caving in to the demands of LDCs for preferential treatment , has succeeded in emasculating GATT”<sup>36</sup> and poses a threat to the ultimate destruction of the global economic order. These, they claim can be rectified by resorting to the original GATT principles of non-discrimination, liberalism, stability and transparency. From this viewpoint, unless a reformation of these policies is embarked upon, developed countries stand to lose from world trade because the Enabling clause, which permits such LDC preferential treatment, is essentially contradictory to GATT non-discriminatory norms. The equitable internationalists, on the other hand, argue that due to great disparities which exist in the course of global trade between LDCs and developing countries, a transitional phase should be adopted during which the less privileged countries will be granted these concessions, and eventually equal their more powerful trading partners. With the success of this, the MFN will be absolutely resorted to, without any derogations. The third school belonging to this issue concede that “preferential treatment should be accorded as a permanent feature of the world trading system rather than as a temporary exception”.<sup>37</sup> According to a statement made by the first secretary gnarl of UNCTAD, which seems to support this view, “however valid the

most-favoured-nation principle may be in regulating trade relations among equals, it is not a suitable concept for trade involving countries of vastly unequal strength".<sup>38</sup>

Here, it may be submitted that it seems reasonable to treat LDCs more favourably than developed countries, since the former are less advantaged, but once the equal footing objective is attained, total MFN should be sought, for the WTO is not a charitable foundation, but a multilateral trading institution from which all countries are to benefit ultimately.

The world trade order seems to adopt this view, by striking a balance between the equitable and liberalist school. Therefore, right from the onset of the WTO Agreement, the objective of promoting sustainable economic growth and development is envisaged in the preamble which centres on the necessity of concrete efforts on the part of developed countries to their trading partners of the less developing world, so as to enable the latter to derive an appropriate share of benefits in international trade commensurate with the needs of their economic development. The preamble further states that members ought to conduct their trade and economic relations with a view to: "raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve environment and to enhance the means of doing so in a manner consistent with their respective needs and concerns at different levels of development". This status of least-developed countries is

also recognised in the Final Act (or GATT 1994 which embodies the results of the Uruguay Round) where they are singled out as requiring special attention and special status, due to their somewhat unfortunate state. In addition, the Decision on Measures in Favour of least Developed countries makes provision for measures of special assistance, including technical assistance “in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion, to enable them to maximise the benefits from liberalised access to markets”.

In conformity with this objective, LDC interests have been recognised under many WTO special agreements. In addition to this, they have fewer obligations and greater periods of time than developed countries, to implement their duties under these agreements. Two examples, the Agreement on Trade Related Investment Measures (Hereinafter, TRIMS) and that on Trade Related Intellectual Property Rights (Hereinafter, TRIPS), will be cited to illustrate this point. To begin with: TRIMS, which prohibits trade balancing requirements and other trade-restricting arrangements, recognises in the preamble to its agreement that : the expansion and progressive liberalisation of trade and investment across international frontiers, “aimed at increasing economic growth of all members and especially that of developing country members, is to take into account the particular trade, development and financial needs developing country members, particularly those of **least-developed countries**”. Also, the preamble to the agreement of TRIPs enables LDCs to create a sound and viable technological base by allowing them maximum flexibility in the domestic implementation of laws and regulations. In making these stipulations, the economic interests of LDCs are hereby recognised by these agreements.



These countries are further treated more favourably than those of the first world by being given greater lengths of time than the latter to implement their obligations under WTO agreements. Therefore, under article 5:2 of the TRIMs agreement, developing country Members are given a five year period to eliminate all anti-GATT TRIMs, while developed countries will be given only two years and LDCs a seven year transitional period to meet this objective. Whereas developed countries have a one year period to delay the application of TRIPs whose function is to establish the standards for the protection of intellectual property rights (thereby, adhering to the MFN principle) including patents, industrial designs, trademarks, geographic indications and copyrights, in international trade, developing countries have a five year period and LDCs are given eleven years.

The implication of positive efforts and more leniency with regard to LDCs here is a sort of derogation from the MFN principle, to grant special and preferential treatment (embodied in the GSP Policy) to African countries and other least-developed economies, most of whom are presently handicapped in economic terms, and cannot compete with developed countries in trading transactions. By so doing, the plain fields are said to be leveled, so that both developed countries and developing countries alike can compete equally in the course of global trade. Thus, the practice of the EU, Norway, Japan and Hungary granting duty free import facilities to LDCs is in conformity with this objective. In like manner, Japan adopts similar policies in trading with LDCs.<sup>39</sup>

However, the status of LDCs has not been taken into recognition in some other

agreements, and this could pose problems for developing countries' economies. Thus, C. Ng'ong'ola and T. Maluwa<sup>40</sup> observe that in the haste to implement the harmonisation programme in the Agreement on Rules of Origin (which dwell mainly on tariffication procedures in instances of differential treatment of like products originating from different countries), non-preferential treatment or MFN trading policies are to be effected and realised within three years of establishing the WTO Agreement. With regard to developing countries, "one minor aspect to quibble about is the absence of any concessions for least-developed countries in the rather hurried execution of the harmonisation programme".<sup>41</sup> More seriously, rules of origin under preferential schemes, which pertain to their trade, were not considered in the scope and disciplines of the harmonisation exercise. Such factors have led commentators to doubt the positive effects that this organisation will really have on LDCs.

### Counter Trade Measures

Counter trade policies, which are permissible under Article I of the GATT principle (even though they are viewed as discriminatory trade policies) tend to differentiate between goods and not countries. Hence, they are not considered to be discriminatory on condition that they are applied equally to all countries. Furthermore, in circumstances where unfair trading practices, such as dumping (where goods are exported at lower prices than that sold in the local market of the exporting country) and subsidies (where governments compensate their exporting firms financially or otherwise, in the exports of their goods) occur with resultant injuries to the domestic industries of the importing firms, the imposition of certain duties may be levied as a necessary evil to counter the

adverse effects of these practices, such as pricing below costs, international price discrimination and predatory pricing, which may result from such practices.<sup>42</sup>

Thus, Article VI of the Anti-Dumping Agreement, for example, states that “In order to offset or prevent dumping, a contracting party may not levy on any dumped product an anti-dumping duty greater in amount than the margin of dumping in respect of such product”. In the same vein, the Agreement on Subsidies and Countervailing, empowers governments, under the WTO, to impose duties on subsidised goods by foreign governments. This seems justifiable, because being entitled to free trade zones in another state, B’s market, does not necessarily imply that state A or any of its citizens are at liberty to destroy state B’s industries. At the same time, the fact that an unfair trading practice has occurred does not suggest that the importing country is free to levy any amount of duty on the imported products. Duties, may in these circumstances, be imposed in a justifiable manner, and according to the amount of loss suffered by the local firms.

It must be noted that in both cases, dumping and subsidies should result in unfair trading practices before the anti-dumping and countervailing mechanisms are lawfully adopted. From this perspective, Kenneth W. Dam states that dumping should be condemned only on condition that “it causes or threatens material injury in the territory of a contracting party or materially retards the establishment of a domestic industry”.<sup>43</sup> For Hercules Booyesen, it should be forbidden only if “it detrimentally affects the industries in the importing country”.<sup>44</sup> This is embodied in the causal link theory, which stipulates that

before such duties are levied, the local firm of the importing country must establish a claim based on substantiated facts and not merely on allegation, conjecture or remote possibility. This is to ensure that foreign firms are not arbitrarily discriminated against simply because dumping has occurred. On the other hand, a domestic firm may be suffering material injury which is in fact, not a result of dumping. The circumstances in which these duties are imposed are thus very necessary in global trade, and there are a wide variety of procedural requirements to be fulfilled before legally resorting to these duties.

In the case of subsidies, these are sometimes permitted, in consideration of such factors as the state of the contracting party's economy, the unequitable share of world export trade which that country has in that particular product and any other relevant factors that may affect such trade in the product. LDCs, in the pursuit of economic and developmental goals, may sometimes be allowed to subsidise their exports, for one or more of the reasons mentioned above. Subsidies may thus be justified and permitted to operate under GATT/WTO. Thus, it has been stated that "subsidies can correct market failures and enhance economic welfare in the subsidising country".<sup>45</sup> According to a publication by the WTO Committee on Trade and Development,<sup>46</sup> developing economies are classified into two groups, for the purposes of determining which ones may be allowed to subsidise their exports. The first category, which consists of those twenty five countries, such as Thailand, Vietnam, Malta and Mexico, whose merchandise exports expanded at a faster rate than world exports during 1985-1990. These countries may not be easily given the permission by other world trading partners, to subsidise their exports when compared to

the other list of thirty five countries, such as Guinea, la Cote d'Ivoire and Barbados, whose merchandise exports were below the 1985 level and may thus have a greater opportunity to subsidise their exports.

However, in such instances, Article XVI requires that the government of the country of the exported goods shall notify the contracting parties in writing of subsidisation. It must also specify in this written notification, certain pertinent details, such as the nature and extent of subsidisation, the estimated effect of the subsidisation on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidisation necessary. From this angle, it is seen that the status of LDCs has been fully recognised and taken into consideration by the WTO, so that if only these countries give written notice of their intent to subsidise their products, they may be exempted from duties which would otherwise be imposed.

### **3.2 Multilateral Trade Liberalisation**

#### **3.1.1 Scope**

The whole philosophy of the WTO lies in the concept of a liberal, free market strategy which stems from the belief that the liberalisation of international trade flows in both goods and in services has a large measure of positive economic and developmental effects on member states.

Firstly, this policy, it is believed, permits developing countries to have improved market access to developed countries' markets for their processed and manufactured goods. This

will encourage diversification of exports and subsequently diminish the excessive dependence on a few primary commodities, leading to the advancement of economic policy objectives in countries. Should this result in economic growth as predicted by the classical trade theory, it may also lead to a decrease in environmental degradation worldwide and the generation of sustainable development, as international trade will provide these nations with sufficient financial resources to tackle these environmental problems.

Trade liberalisation is also believed to provide opportunities for countries to trade in world markets for goods and technologies that facilitate the implementation of needed environment-improving processes at home.

Hence, the WTO deemed it expedient to include new areas of trading activity such as services and intellectual property, for the first time in international trade. In the past, trade in textiles and clothing was governed by the Multifibre Arrangement, which derogated from GATT disciplines. Consequently, issues relating to investment, trade in services and those concerning the environmentally related aspects of trade have for the first time, been included in multilateral trading agreements. Clarifications have also been made in agricultural trade. Agreements encompassing some of these sectors will be examined later in this chapter.

Through trade liberalisation, the WTO has further helped in resolving some of the long-standing tensions in the international economic order, such as the debate concerning whether or not to include trade in services as part of the international trading agenda. With the increasing importance of certain sectors such as communication and technology

for the economies of industrialised nations on the one hand, developed countries such as the USA and Canada persisted for the inclusion of services in world trade. For the LDCs on the other hand whose main exports are agricultural products, excessive tariffication of these goods by the developed countries, especially those concerning the notorious CAP system, imposed by the EU posed a great barrier in trade, resulting in a series of LDC protests for the removal of these tariffs.

In addition to this, in international trade there seems to have been the practice of goods flowing from the first world to the third world almost all the time. This ultimately leads to the first world economies opening up markets in the third world where items from the former's territories are sold in the latter's, and the process not reciprocated. This obviously suggests that developed countries make immense profits at the expense of the developing countries, and only a world trade became a stratified order where only a section of the globe's countries benefited. Thus, Berg states that developing countries, such as Brazil and India, for reasons of historical experience based on the phenomenon of international services flow from North to South which constituted a potential loss on their part and all potential gains to be on the side of developed countries, believed that the inclusion of trade in services to have the same result.<sup>47</sup> Furthermore, industrialised countries had derived enormous benefits from the expansion of their markets in goods made possible under the GATT system of lower tariffs and scaled back quotas whereas much has not come to light with regard to developing countries.

Thus, including services in global trade has been a major agenda of the first world and

this has been opposed by LDCs. For the latter category of states, despite the opening of new markets in the course of international trade, have been unable to resolve the complicated problems of crushing poverty, malnutrition and illiteracy which “continue to deny basic necessities to the majority of people living in developing countries”.<sup>48</sup>

Apart from this, the difficulties in agreeing to a specific definition of term services, the wider spectrum of economic activity involved in services trade in comparison with trade in goods, the complications in measuring services and the likelihood of this trading activity infringing on national sovereignty, contributed to the LDC vehement opposition to the trade in service agenda. Thus, there were a series of debates which lasted for many years and which have been classified as rancous in the GATT negotiations, and which almost led to the break up of the GATT.

However, the WTO has through its liberalisation principle, sought to find solutions to many of these problems, thereby, arriving at a breakthrough, as indicated above. For instance, it has been stated that “The General Agreement on Trade in Services is the first multilateral agreement that has as its objective the progressive liberalization of trade in services”.<sup>49</sup> The liberalization of trade to this sector, agriculture and how these affect the environment, will be reviewed at this point. This will be done through the respective agreements, which cover services, agriculture and the environment.



(a) Services

The General Agreement on Trade in Services

The Agreement introduces general obligations to be respected by contracting parties. These duties includes the MFN treatment and transparency requirements, that is the requirement for open and free trading practices with regard to national laws and regulations, in service trade. Even though it does not cover financial services, maritime transport and audiovisual services, this agreement still plays an important role, for through these obligations, provision is made for future negotiations, which could gradually include these other forms of services.

From the beginning of this agreement, it appears that the involvement of LDCs and their interests in the service trade liberalisation agenda is fully recognised in this agreement. This is seen in the preamble of the GATS where it is provided that there is a desire to facilitate the increasing participation of developing country Members in trade in services, and also the expansion of their service exports through, *inter-alia*, the strengthening of their domestic services capacity and its efficiency and competitiveness.

The agreement further makes recognition of the difficulties that LDCs encounter while accessing information which concerns commercial and technical aspects of the supplies of services and the availability of services technology. These aims if accomplished, will be in conformity with the three principal objectives of the negotiations on services which are:

(a) the creation of a multilateral framework of principles and rules for trade in services,

including the collaboration of possible disciplines for individual sectors;

(b) the expansion of trade in services under conditions of transparency and progressive liberalisation and

(c) the promotion, through such liberalisation, of the economic growth of all trading partners and the development of developing countries.

However, it must be noted that the liberalisation of trade in this sector could pose certain problems. To begin with: the quantification of commitments to liberalise service trade in the same way as for goods is not an easy task. This owes to the absence of international nomenclature for trade-services that could provide accurate estimates of imports of particular services under different modes of supply. Consequently, comprehensive set of data that could provide reliable estimates of imports of particular services under the different modes of supply is lacking. Furthermore, there is no equivalent of customs duties in services and services suppliers, where they exist, typically take the form of regulations relating to the supply of services. The effect of such measures, or of their removal cannot be easily assessed, if at all.

## (b) Agriculture

### Agreement on Agriculture

In world agricultural trade, the following measures have been implemented in order to attain the WTO's objective of trade liberalisation: an improved market access through the reduction of barriers, an increase in the scope of bindings, a progressive reduction in trade distorting measures of domestic support and the lowering of subsidies to enhance export

competition. Furthermore, the tariffication of all non-tariff border measures (the conversion of tariff-equivalents), including that of the notorious EEC's CAP policy (apart from those products for which special treatment has been negotiated), led to a degree of stability and security of world agricultural trade which will for the time in GATT's history, "be than in industrial products, since 100 per cent of agricultural product tariff lines will bound".<sup>50</sup> There must be a reduction of tariffs resulting from the tariffication process. Whereas developed countries have six years to meet a simple average of 36%, developing countries have 24% over a period of ten years, with minimum reductions per tariff line of 15% 15 per cent and 10 per cent respectively. Developed countries, which account for two-thirds of world imports of agricultural products, indicate an average percentage reduction of 37%. When it comes to individual categories, developed countries will cut tariffs by below-average amounts on oilseeds, flowers and plants. They will also cut tariffs by below-average amounts on amounts on sugar and dairy products, with other product categories close to the average cut. These countries, with regard to tropical products which constitute one-half of developing countries' agricultural exports, will reduce tariffs by 43%.

Figures on the improvement in market access in terms of tonnage resulting from minimum access commitments indicate that substantial increases in market access occur for coarse grains (1,757,000 tons) and rice (1,076,000 tons), temperate crops as well as for other products. There must be a reduction of 21% on the quantities of exports which can be legally subsidised. Developed countries have reduced their subsidies schemes to their exporters. Thus, total export subsidy outlays are scheduled to decline by 36%, from

\$21.3 billion to \$ 13.7 billion by the end of the transition period. Subsidy reductions of 18 per cent, that is, from \$197 billion to \$162 billion on outlays (in terms of the Aggregate Measurement of Support), in connection with commitments on domestic support to agricultural producers.

Through these measures and the reduction of subsidies, the WTO is said to have achieved an important first step towards the liberalisation of world trade in agricultural products. For African countries, this could possibly play a significant role in the increase of agricultural exports, which is a great source of income to them, leading to an ultimate improvement in development. If the cost of current protection drops, opportunities could open up for efficient producers in industrial, developing and transition economies. This process, it is hoped, will set up the stage for market opening negotiations in the future.

#### (c) Environment

Due to the gradual worrying complications of environmental degradation which have arisen from certain activities, the strengthening of environmental legislation in almost every sphere of human activity including trade between nations, has in the past few decades and more recently, become common practice throughout countries and beyond the limits of national jurisdiction. This is strengthened by the fact that excessive trade liberalisation could lead to harmful environmental effects, through the depletion of nations' resources, for example. The following cases exemplify this point.<sup>51</sup> It has been stated that the production of cocaine in South America, specifically, in the Andean Region, has had devastating impacts, such as pesticide residues, chemical dumping,

deforestation, soil erosion, water pollution, mono-agriculture and the loss of biodiversity on the environment on the environment of this region. According to a report by the FAO, the dependence of certain West African countries on exports of timber have led to approximately 13,000 square kilometers of their forests disappearing annually. If present trends continue, the tropical rain forests of Ghana, La Cote d'Ivoire, Nigeria and other West African countries could gradually ebb away by the year 2020. The production of gold in Brazil (which has become the world's fourth largest producer of this commodity) and other areas of the Amazon region, has resulted in mercury pollution, which is in turn harmful to the surrounding population. According to a report by Robert Repetto of the World Watch Institute, "Rapid industrial growth in the so-called "Asian Tigers" has also led to a significant worsening of environmental quality, from a reported doubling of hazardous waste generation in Thailand, to shocking jumps in respiratory diseases in some sections of Indonesia, due to urban pollution.<sup>52</sup>

In the light of such factors, a Committee on Trade and the Environment has for the first time, been set up under the international trade agenda, as indicated already. Hence, this committee came into existence on the 1st. of January, 1995, when the WTO was formally established, as the organisation's members believe that work in the WTO should make immense contributions to the building of a constructive relationship between trade, environment and sustainable development. Similarly, the Ministerial Decision on Trade and the Environment, concluded at the end of the Uruguay in 1994, entrusts the CTE with a twofold mandate:

(a) to identify the relationship between trade and environmental measures in order to

promote sustainable development; and

(b) to make recommendations on whether any modifications to the provisions of the multilateral trading system are required.

In the establishment of these committees, it must be noted that the WTO does not intend to act as an environmental agency, tackling environmental problems, for which there are already a multitude of environmental conventions. Thus, these incorporated environmental conventions touch on environmentally related aspects of trade alone. Neither do they seek to undermine the stipulations of the latter. From this perspective, Sabrina Shaw states that "... if problems of policy co-ordination to protect the environment and promote sustainable development are identified through the CTE's work, steps taken to resolve them must uphold and safeguard the principles of the multilateral trading system which governments spent seven years strengthening and improving through the Uruguay Round

negotiations".<sup>52</sup> By so doing, it is hoped that the more powerful nations may not, under the umbrella of the free trade concept, export potentially dangerous goods to less powerful LDC's territories, as has sometimes occurred. Simultaneously, third world countries, will in their quest to improve their economic status, export environmentally quality goods to industrialised ones.

### 3.2.2 Tariff Reduction and International Market Access

#### (a) Industrial Products

With regard to exports of industrial and manufactured goods from developed country

markets to those of developing countries, above average tariff reductions apply to product categories accounting for slightly less than one-half of total exports. This has led to a total reduction in the average tariff of developed countries being 37%. Below average tariff reductions apply to fish products and other categories of processed primary products as well as labour-intensive manufactures, that is, leather goods, textiles and clothing because these goods are regarded as sensitive.

The WTO further envisages a predictable and growing access to markets on the part of all countries, by continuing GATT's practice of generally outlawing quotas. From these policies, it appears as if the Uruguay Round could open up more secure markets for world trade in industrial products. Due to the substantial increase in developing countries' level of bindings, there may be an increase from 68 to 87 per cent, in the proportion of total trade that is subject to bound rates. Then again, countries, it is said, will have greater access to one another's markets due to the reductions on average tariffs of developed countries (down 40%), and transition economies (down 30%), with a post-Uruguay average tariff of 6.3 per cent on imported industrial products. The following include main features of developing countries' (twenty six) market access commitments as identified by the GATT Secretariat:

- (i) the expansion of bindings to cover 61 per cent of imports, compared to the pre-Uruguay round of 13 per cent; and
- (ii) a reduction of ceiling rates for tariffs leading to a decline of 30 per cent in the trade-weighted average tariff of developing economies. There will be much more stability in trade among countries in developing countries, for instance, in Latin America, where (b0

participants will bind 100 per cent of tariff lines at ceiling rates, which is a good sign.

(b) Textiles and Clothing

In the case of textiles and clothing, there have been bilateral and multilateral import restrictions, “originally devised to safeguard markets and industries in some developed countries from increasing competition from South-East Asian economies”,<sup>53</sup> over the years. This practice continued even under the GATT, implying that LDCs were denied access to the textiles markets of these countries.

However, under the WTO, provision made for market access opportunities provided by the phase-out restraints applied under the Multi-Fibre Arrangement should be carefully assessed. For those products for which an MFA is a binding restraint, the tariff equivalent of the quota may well exceed the ordinary tariff, with that the result that the percentage reductions in import barriers calculated on the basis of ordinary tariffs will understate the true increase in the market access resulting from the Uruguay Round. In addition to this, it has been said that partly because of the long implementation period, the significance of this agreement for developing countries are difficult to estimate.

(c) Dispute Settlement

The improvements in the existing rules and their extension to new areas where they were absent would be meaningless if there were not a sufficiently strong dispute settlement system to enforce these obligations. For this reason, the GATT dispute settlement system



has long been considered to be the cornerstone of the multilateral trading system. It has provided countries with the opportunity to challenge actions taken by trading partners and obtain rulings from independent panels of experts on the GATT-consistency of such measures. Upon their adoption by the GATT Council, such rulings have represented an authoritative basis on which to seek the removal of a GATT inconsistent measure.

The Uruguay Round Settlement Understanding incorporates major improvements in relation to GATT dispute settlement procedures. The first and perhaps the most significant change is the abolition of the need for consensus at the procedural steps leading up to, and including, adoption of panel rulings. Instead, a negative approach will apply: a consensus will be needed in order to halt the proceedings from advancing at any stage of the formal dispute settlement procedures. This change will greatly enhance the confidence of all trading all trading nations, large or small , in the multilateral trading system since the potential for procedural blockage will be removed.

However, in order to ensure that this automatically comes with greater confidence in the results of the dispute settlement system, a new element is the independent review by an appellate body before a panel's recommendations become legally binding.

From the perspective of developing countries, it should be noted that the elements of the 1996 Decision on Dispute Settlement would continue to apply under the WTO dispute settlement procedures. Although this Decision has seldom been used, mainly because developing countries have only recently become more recently become frequent users of

the GATT dispute settlement procedures, it contains features of specific interest to developing countries. These include easy access to the good offices of the Director-General of the GATT/WTO in order to mediate and seek to find satisfactory resolutions to the dispute, and shorter durations in which panels must complete their findings..

Another major change, not within the procedures, but with regard to the functioning of the dispute settlement system as a whole is the fact that there is now an embodiment of all the dispute settlement procedures established under a Dispute Settlement Body. This integration is the mirror “image” of the integration of rights and obligations which has been implied by the single undertaking of WTO members. This change will help ensure that issues which arise in the enforcement of obligations in one area, (for example, anti-dumping) are dealt with by the WTO members at the highest political level.

#### (d) Transparency

In order to ensure the effective monitoring of trade policies and their transparency, the Trade Policies Review Mechanism (TPRM) has been given permanent status in the WTO. The objectives of the TPRM are to contribute to improved adherence by all Member Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practice of members. Reviews are scheduled to take place against the background of wider economic and developmental needs, policies and objectives of individual members, as well as the

external trading environment.

The TPRM provides for a Trade Policies Review Body (TPRB) whose purpose is to examine (on a regular basis) all trade policies and practices of WTO members, every two years for the four major traders (the EU, the USA, Japan and Canada), every four years for the next sixteen leading traders (a group which currently includes nine developing countries), and every six years for the remaining traders, although longer intervals may be prescribed for least developed countries. The TPRB will also carry out an annual survey of international trading environment which are having an impact on the multilateral trading system, assisted by the Director-General setting out major activities of the WTO and highlighting significant policy issues affecting the trading system.

Since the TPRM has been in place for over five years and has become a well-established feature of the GATT system, some conclusions regarding its contribution to a more open and stable trading system may be drawn. The first is the valuable stimulus of the TPR process to the internal discussion of trade policies in certain countries which have been specifically chosen for review. Conducting a review, compiling a government report and responding to questions raised by the secretariat in the preparation of this report, means that the national administration has to carefully examine the overall structure and impact of its trade policies.

Together, these elements of the TPR process have helped countries to assess their trade and economic reforms, and may have contributed to some portion of the liberalisation that has taken place under the Uruguay Round. In the future, the TPR process will help WTO members evaluate their implementation of the Agreements, as well as early

warning trends of potential concern to all participants in the trading system.

## **CHAPTER 4: WTO AND LEAST DEVELOPED COUNTRIES**

### **4.1 Trade Patterns of LDCs in the Global Economy**

#### **4.1.1 Growth in International Trade**

Owing to certain factors such as the resumption of net flows to developing countries as the debt crisis receded, the emergence of 'net growth poles', particularly, in Latin America and Asia and the near-universal push towards trade and capital market liberalisation, there has been a massive surge in the world trade over the past few decades, especially, since 1983.<sup>54</sup> Therefore, there has been an increase in global merchandise exports of the world's GDP over the past two decades. Trade in services has also risen from 15% to 22%, and total international reserves have increased by \$50 million in 1994.<sup>55</sup> Developing countries' share in world exports and imports in commercial services also increased between 1987 and 1994.

#### **4.1.2 Variations in Trade Performance of Developing Countries**

Despite the general growth in global trade, it seems that the world's trading partners have had different shares in world trade exports and imports. On the whole, it appears that due to their active participation in the globalisation process, developing countries in Asia and China seem to have performed better in trade and investment than their counterparts in other parts of the world. Thus, Rashad Cassim and Kate Kuper assert that whereas the trading capacity of certain countries have "grown in leaps and bounds, some have become even less marginal to the world economy with negative growth rates".<sup>56</sup> Furthermore, a report by the WTO's Committee on Trade and Development indicates that regarding trade performance of developing countries by region, "trends in their respective shares in

world merchandise trade over the past varied among regions”.<sup>57</sup> For instance, according to this report, the share of developing countries in world merchandise exports is less than half of China and other developing countries in Asia. Hence, whereas there was a dramatic boom in the market share of Asian developing countries’ merchandise exports that of Latin America deteriorated and those of Africa and the Middle East decreased well. Owing to this, China’s share in world merchandise trade exceeds those of Africa and the Middle East put together. Further variations in developing countries’ exports can be observed from the fact that in 1994, figures of developing countries’ exports in mining and manufactured goods as well as agricultural products were much less than that of developing Asia and China.

Some of trade patterns have resulted from the high share of developing Asia and China in some of the fastest growing product categories, such as office and telecommunications equipment as well as clothing and consumer goods (examples being footwear and toys).

In addition to this, other external factors such as lack of developing countries’ access to foreign markets of developed countries, have also accounted for the generally poor performance of LDCs, especially, African countries, in world trade. For the latter have more often than not, faced problems of preference erosion, tariff escalation, free trade areas, customs unions and barriers to entry in certain key sectors of particular interest to developing countries- including agriculture, textiles, clothing, fish and fish products. Their typically small size, lack of diversified economy, outstanding external debts to the IMF and World Bank and first world countries have also accounted for this. Finally, domestic factors such as issues relating to constant civil strife, especially in African

countries, macroeconomic imbalance, lack of human and physical capital and poorly developed infrastructure, have all compounded the problem of these countries' LDCs' performance in global trade.<sup>58</sup>

#### **4.2 Impact of WTO Trade Policies on LDC Economies and Trade**

The liberalisation of multilateral trade, the principle of non-discrimination and covering of new and extensive areas by the WTO, could be perceived as having both positive and negative effects on LDCs who have for sometime, experienced stagnation in their global trade performance.

##### **4.2.1 Greater Market Access**

In assessing the new market opportunities for developing countries which will result from the WTO, it has been observed that liberalisation could lead to a better LDC market access into developed countries. Many developing countries are gradually being integrated than before into the advanced science and engineering education systems of the most technologically dynamic countries. The reduction of tariffs in certain key trading sectors such as agriculture and industries suggests that LDCs obviously have a better market access to DC's markets. With the inclusion of trade in services, undertakings of certain obligations have been made under the GATS, which relate to the movement of natural persons, even if these are circumscribed by certain requirements of intra-corporate transferee status and foreign investment restrictions. A new Agreement on Information Technology (ITA) which was concluded at the WTO's first Ministerial Conference in Singapore (in December 1996), indicate that a new wave of telecommunication is in

progress. Improvements have also been made, with regard to tariff reductions within the pharmaceutical industry. LDCs can now absorb new technologies into their territories, which are in need of these.

Through the liberalisation of trade in telecommunications and informatics, LDCs stand to gain from the globalisation of labour markets and their workers have been able to export service inputs to production processes in developed country markets. This is illustrated by examples from the following LDCs.<sup>59</sup> One such instance is the case of teleporting from the Caribbean and the software industry in Bangalore, India. In Kenya, there has been the establishment of horticultural research centres and extension services, a factor which has been instrumental to the growth of the horticultural centre. In Zimbabwe, the National University is being introduced into the global knowledge base through television courses from developed countries. Another example of the importance of telecommunications and service to the economy of LDCs is demonstrated by the fact that in 1984, the use of satellite remote sensing in Sudan enabled the government to launch an examination of the conditions of crops when this country was afflicted with drought. The positive effects of all these developments of service trade on the economic welfare of LDCs is evident here. For a country such as Zambia which is undergoing economic deterioration, due to the decline and privatization of its copper mines, the services agenda could perhaps serve as an alternative target to enhance the welfare of its economy.<sup>60</sup> LDCs could thus advance technologically, due to the WTO.

From this viewpoint, a WTO Report has indicated that more apart from spurring



economic growth through technological transfers and direct investment in their domestic service industries, technology can do much more than to reduce poverty and environmental damage. It can increase the supply of food and reduce morbidity and mortality, particularly in Africa. Then again, it can lower the cost and increase the supply of energy to the poor.

However, with regard to the Agreement on Safeguards, it has been said that the lack of adequate concessions in favour of LDCs, implies that market access of these countries to the territories of their more powerful trading partners in respect of this product, is effectively blocked. Thus, it has been stated that with regard to concessions under this Agreement, “they leave fairly intact the rigorous conditions for the application of safeguards, and this makes it unlikely that developing countries will find a viable option for promoting some of their developmental and welfare needs”.<sup>61</sup> Accordingly, it could be said that these principles enunciated by the new organisation, are not simply beneficial to LDCs, who may even suffer dire consequences from its implementation.

#### 4.2.2 Economic Development and Growth

With the potential benefits of LDCs from world trade, especially, with the thorough revision of the free market concept and the granting of certain tariff concessions, financial gains which may accrue from multilateral trade could be utilised by LDCs, to engage in sectoral developments in parts of their economies.

According to economists, trade liberalisation could yield increased expenditure to solve

various economic problems in a country and “expanding trade is a source of increased wealth and diffusion of technology”<sup>62</sup> which ultimately assist a nation to enhance its developmental objectives. Here, the viewpoint is that since trade liberalisation leads to the scope and scale of national economic activity, there will be increases in per capita income. For instance, it has been estimated that with the establishment of the WTO, the financial gains to be derived from this organisation, by the year 2002 should stand at approximately \$230 billion. With a tremendous boost in economic activity which is facilitated by increased market access, especially for developing countries into industrialised ones, a rise in per capita income could provide the former with more resources to contain problems of national policy, such as those pertaining to the economy and the environment. This, and liberalisation of trade in services could be particularly beneficial to LDCs who have been described as having “a disproportionately small share of the world’s telecommunications.”<sup>63</sup> For instance, in Latin America which is supposed to have the largest number of telecommunications companies (and whose service industry is increasing massively) in the developing world, there are approximately as little as 10 lines per 100 habitants. On the other hand, Sub Saharan Africa which averages less than 1 telephone line per 100 habitants still have only 1 per 1000. 80% of Kenya’s population lives in areas which lack telephone lines. In Asia, countries such as China and Indonesia are experiencing a rapid increase in their service and telecommunications sector, while other countries in this region such as Nepal and Sri Lanka still have a long way ahead.<sup>64</sup> With such occurrences, it is very useful that the WTO has managed to liberalise trade in this sector, in particular. It will be to LDC benefits if these impediments are overcome and the only way by doing this is to trade in services and invest in this sector in these

LDC territories. In this way, an introduction is made of these new technological innovations into developing countries, who as it is, are way behind developed countries, at least, in the development of the telecommunications sector.

Another illustrative point regarding the positive contributions to developing countries made by trade liberalisation, is seen in a recent World Bank study. This suggests that when national per capita income exceeds \$2000, there is a steady decline in the percentage of people in developing countries which lack clean water and proper sanitation. It has been revealed through a 1991 study by Grossman and Grueger of Princeton University that, as per capita income surpasses \$5000 level, environmental protection for instance, increases as part of general welfare gains associated with development.<sup>65</sup> For South Africa and other African countries, as well as those of the Pacific and Carribean regions where it is claimed that large sectors of the population live in conditions of abject poverty, this could be useful, since there could be an improvement in the lifestyle of these impoverished people.

#### 4.2.3 Reality of the Effects of WTO Policies

The policies of the WTO, in relation to LDCs, though they sound fine theoretically, must be assessed in the light of their practical effects.

Firstly, the nature of these obligations are <sup>burdensome</sup> onerous, and may be difficult for LDCs to implement, in relation to their trading partners of the developed world. For there are many difficulties faced by poor countries as trade becomes complicated by the many new

issues which have been included in the international trade agenda. Reasserting this view, the Mozambican Minister of Industry, Trade and Tourism, states that the poor nations are overwhelmed by existing trade deals as well as new ones that developed countries were rushing and introducing, this is not fair and the more powerful trading partners should revise some of these terms at an appropriate pace.<sup>66</sup>

It has further been suggested by a WTO report<sup>67</sup> that owing to these burdensome obligations which LDCs must carry out, they may even suffer a trade balance deterioration, that is approximately \$300 to \$600 million annually, implying a 2.6% to 5% of their export earnings, and a cumulative loss of as much as three billion dollars, by the end of this century. Also, a report by the UNCTAD<sup>68</sup> Secretariat states that the impact on the balance-of-payments of several of the countries, specifically, the developing nations of Burundi, Ethiopia, Haiti, Malawi, Mozambique, Rwanda, Guinea-Bissau and Cape Verde individually, would be very high. These countries are also likely to suffer a decline in their export earnings due to burdensome obligations under the WTO. According to another report prepared by the UNCTAD Secretariat<sup>69</sup> (to the Ad Hoc Working Group on Trading Opportunities in the New International Trading Context), LDCs may lose about \$163 to \$265 million in export earnings, while paying \$145 to \$292 million more for food imports. On the contrary, the EU is likely to reap benefits of \$80 billion from the implementation of the Uruguay Round, while USA's share amounts to \$19 billion, these constituting the lion's share of WTO profits. Less than a third of the benefits would go to China and the South Asian growth countries. Sub Saharan Africa would have to reckon with an absolute loss of 2.6 billion dollars. All these figures arise

from the \$213 billion that the Uruguay Round is to yield annually.

In addition to this, trade liberalisation might mean that LDCs may have to engage in free trade to the extent that their environment may suffer in the final analysis. For instance, some of the LDCs, may due to financial constraints and the need for foreign exchange, be inclined to accept hazardous waste which may be dangerous to their economies, as has sometimes occurred in the past.

Also, the industrialised countries seem to have always derived the potential gains from world trade. Berg reaffirms this view.<sup>70</sup> Despite trading concessions granted by the world trade's more powerful trading partners, LDCs' economic problems have still persisted. Under the new trading order, it is wondered whether the situation will be any different. With regard to certain problems experienced by the first world in an important sector such as agriculture, and the need for a reformation of certain trade policies to industrialised countries' own benefit, if these LDC concessions do not impact the latter positively, one wonders whether the situation will be addressed by the more privileged developed countries. An example of the protectionist measures which have been used by the more powerful trading partners and had negative consequences on these economies themselves, thus being termed a "vicious cycle"<sup>71</sup> in agriculture, will be cited at this point. In the USA, the cost of subsidies and farm support programmes have resulted in excessive surpluses. USA grains stocks, for example, are equivalent to nine months of domestic use and exports. The EEC's butter mountain equals about nine months of total domestic use. The world red meat market is burdened by surplus supplies, of which the

EEC's share is about 50%. The EEC's export subsidy on feed wheat is more than twice the world sales price of \$73 per ton. US tax payers are paying nearly \$ 2 billion to 14,000 dairy farmers to terminate dairy production. In Japan, consumers pay nearly six times more for domestic rice than the world market rice.<sup>72</sup> With such events, the food trade balance of some of these trading partners, particularly, the EEC, has sometimes experienced a deficit in its trade balance. LDCs are now being said to be given an increased a market access, in agricultural trade. For instance, according to one proposal by USA, there was to be a massive reformation of that country's agricultural policy, so that "Developing countries , in particular will have the opportunity to compete in a free market, to earn through trade, the exchange needed to finance development including their own agricultural production. .... it is the domestic programs of the developed countries which have deterred growth in the developing world."<sup>73</sup> However, with regard to such objectives, it is wondered if self- interest of developed countries to abandon these destructive schemes led them to insist on liberalising trade in this sector, or if it is the good will to ensure that these group of poor countries rise to a high level. Once again, will it be the same situation as in the past, where potential gains of trade were accrued by developed countries, due to trade policies which favour the latter?

Then again, the time frame for the realisation of these policies creates some uncertainty as to the reality of these positive concessions for developing countries. For instance, with regard to the gradual phase out of the Multi Fibre Arrangement and non-Multi Fibre Arrangement import restrictions which is being carried out by the Textiles Monitoring Body under the Agreement on Textiles and Clothing, it is wondered whether the ten year

period which has been envisaged as being required for the complete realisation of these policies, will ever realised at all. From this perspective, it is said that "The implications of this Agreement for developing countries are, again, difficult to assess, partly because of the long implementation period".<sup>74</sup> Rainer Falk states with regard to this issue that according to two reports on the Uruguay Round, when a critical assessment of the rule-content of the Agreements on Agriculture and Textiles and Clothing is made, it is perceived that third world countries will not realise any gains until after a decade or more.<sup>75</sup> These Reports suggest that even after this period, LDCs could be susceptible to new protective measures which the more powerful trading partners could come up with, to their disadvantage.

Compounded with this problem is Africa's external debt to the IMF, the World Bank and certain countries of the first world. With this situation, these countries are almost always handicapped in economic terms, and find it difficult to make any profits in world trade. It must be noted however that at the moment, the World Bank and IMF have evolved a debt reduction scheme whereby these debts will be reduced by these institutions, to the benefit of the world's most indebted nations. Thus, in April 1997, Uganda, was the first African country to have its debt reduced, and this was by 19%, implying that it would pay 700 million dollars less of its debt.<sup>76</sup> Economic reform packages are also in progress. If this debt burden is successfully managed by the international community, and there is a continuance of granting concessions to LDCs who would also be advised by this community to encourage investment from foreign entrepreneurs, there could be an improvement in the economic situation and trade performance these countries.

Nonetheless, until these measures are carried out to their fullest extent, LDCs are likely to continue being in their economic crises, and unless such problems are overcome, these countries may not realise many gains under the WTO.

Another important point to consider is the domestic situation of these LDCs. Theoretically, the WTO may provide certain concessions for the states of these countries. However, with the internal situation of these countries, such as Rwanda and Burundi, where civil strife is rife and political stability prevails, it might inevitably be difficult for these policies to be come to a completely positive realisation in these countries. For instance, an IMF report states that owing to the incessant civil war in Rwanda, this country's merchandise export earnings, in particular, for coffee and tea, came to an end in March 1985.<sup>77</sup> Even though not all LDCs are faced with civil war as in the case of these two countries, there is almost always a case of some political disturbance of some sort. With such situations occurring in reality, improved trade performance and market access of these developing countries to developed countries' markets might be difficult. As indicated by the Malaysian delegate to the Botswana Conference on the Commonwealth Partnership for Technology Development in early May 1997, peace and stability are the secret to economic success. Therefore, South East Asia has progressed economically and developed the welfare of its people since there was peace and political stability there. African countries could improve their political situation and strive to attain be more stable in this sense, so that economic success is achieved, and performance in global trade ameliorated.



#### 4.2.4 Marginalisation

Since international trade serves the interest of the world at large and hence, those of the developed and developing world, it seems reasonable that both categories of nations should be able to express their opinions on important issues such as those pertaining to investment, free trade policies and government procurement. However, it has often been observed that in the course of such negotiations, third world countries are sometimes marginalised and are not given a voice by the first world countries. This could contribute to the potential gains of global trade being derived by the more powerful, who would obviously get richer and the LDCs getting poorer. This is because, some of these negotiations involve the question of the rights of ownership and the common heritage of mankind. For instance, who is entitled to the economic rights of manganese and cobalt mining in the Pacific Ocean? It has been said, with regard to the marginalisation of LDCs at the December 1996 WTO Ministerial Decision in Singapore, “The one-sidedness of the consensus-building process towards the interests of the industrial nations could be seen once again in Singapore”.<sup>78</sup>

At this conference, delegates from the first world focused on discussing issues of importance to them, with the aim of protecting their home markets and gaining access to the home markets of developing countries. Furthermore, as the Third World Network Survey at the periphery of the conference revealed, many southern delegations were simply uninformed as to which theme was under discussion, let alone being brought decisively into the decision making process.<sup>79</sup> Even when discussions on assistance schemes to LDCs came up on the final day of this conference, developed countries

focused on resolving certain squabbles concerning information technology, amongst themselves. Thus, with regard to fundamental themes of this conference, such as the issue of whether to include international investment and social standards in the centrepiece of the WTO's liberalisation agenda, economically significant countries such as the industrialised nations of the first world as well as Malaysia and the other NIEs solely negotiated these issues, while LDCs were not given the opportunity to participate in these negotiations. The fact that of the WTO's one hundred and twenty eight members, forty eight LDC member states account for as little as 0.4% of global trade may be the reason why they hardly received any attention at the forum, one delegate of the conference opined.<sup>80</sup>

If LDCs have been given special considerations and concessions under the WTO, it is only logical that they are given a chance to express their views on certain matters when it comes to the decision making process. This marginalisation may even be intensified, if LDCs who constitute the world's poorest nations, incur huge financial losses and become poorer, as indicated by the UNCTAD and WTO Reports discussed above. From this angle, another Report by UNCTAD indicates that "such a huge loss will only increase their marginalisation in the world's economy".<sup>81</sup> However, such events make the whole issue of whether these less developing countries may benefit at all, under this new trade order, a little doubtful. South Africa, as a new member of the international trading regime, may be treated differently, because despite this country being treated as a developing one, its wealthy economy might give it a chance to express its views alongside those of rich countries such as Canada, the NIEs of Asia and the Far East and

other wealthy countries. Being given this chance may certainly imply that South Africa could continue advancing economically since it actively participated in decision making. Being denied this opportunity could however mean that to South Africa, having acceded to this organisation, may perhaps have little or no significance at all.

## **CHAPTER 5: SOUTH AFRICA AND THE WTO**

### **5.1 The Status of South Africa in the Global Trading System**

#### **5.1.1 South Africa's International Isolation and the Consequences Thereof**

Despite South Africa's active participation in the formation of the Bretton Woods Institutions, this country has ironically been isolated from world trade during the past few decades. This stems from the prevalence of Apartheid and its intensification (especially, since the 1960s) which for some years, characterised this country.<sup>82</sup> Apart from trading with a few countries especially within the Southern African region, it could not engage in commercial activities with a many countries. Hence, South Africa, despite its development of industrialisation, for almost three-quarters of this century, and other factors, such as its accounting for 70% of SADC's exports to the African continent, for instance, has not achieved its full economic potential. The inevitable result of this political and economic isolation is some degree of economic decline at some point in this country's history, for instance, in the 1980s. Tshediso Matona states that "as minerals exporter and with the dependence of its inward industrialisation strategy on foreign finance and capital goods, South Africa' economy became adversely affected by the international economic isolation and the ensuing economic deterioration of the 1980s".<sup>83</sup>

This state of affairs resulted in the country's debt standstill of 1985 and posed grave problems for the South African economy. For example, the depreciation of the rand in 1985 and the ensuing recession contributed to a 22% decrease in output and a 22% decrease in employment within the Textiles and Clothing Industry in the early eighties. After brief moments of improvements in production and employment in this industry,

(between 1989 and 1992), capacity utilisation sunk to 74% by May 1992. This figure symbolises the lowest experienced by the industry.<sup>84</sup>

This country's balance of payments problems have also contributed to its economic decline. Consequently, South Africa's government implemented monetary and fiscal policies for the maintenance of large surpluses on the current account of the balance of payments, with the aim of financing debt repayments. For instance, owing to economic problems such as the depreciation of the rand and a lack of competitiveness, among the series of protectionist measures introduced by the government to protect local manufactures and perhaps, abate these setbacks, in 1988, the Board of Tariffs and Trade introduced a Structural Adjustment Programme of the Apparel Textile and Clothing Industries within the textiles and clothing industry. This policy was geared on intense tariff protection, and symbolised the policy of inward industrialisation.

Furthermore, a General Export Incentive Scheme was introduced as part of the general Structural Adjustment Programme introduced in April 1989. Through the provision of a tax-free financial subsidy to exporters based on the value of exports, the degree of processing and the local content of the exported product, this policy achieves its principal aim of offsetting price disadvantages that South African exporters face in foreign markets. However, this regulation, coupled with the lack of global trading relations resulted in a general non-competitiveness of South African textile products in world markets. Exception lies in Texco One, a textile industry, which has followed a liberal market policy, and has been free from protectionism, thereby, being internationally

competitive in terms of its products.

In terms of South Africa's stringent trade policies to resolve some of its economic problems, the SAP and some of these protectionist mechanisms introduced in the apartheid era, affected growth negatively, causing the creation of employment opportunities to come to a standstill. Then again, South African goods became non-competitive in the international market. For high protectionist measures stemmed from the implementation of its progressive import substitution policy (which successfully operated in its isolated trading environment), through extensive protective measure such as the maintenance of relatively high tariffs, import duty restrictions and customs duties. Domestic industrial structure became costly and this also contributed greatly to lack of competitiveness of South African goods in world markets. Furthermore, it "inhibited the development of an export culture amongst South African especially in the manufacturing sector".<sup>85</sup> Consequently, South Africa did not get the chance to compete in trading activities with NIEs of the far East, for instance, whose active participation in the globalisation process, in the 1980s, enabled them to become far advanced in terms of production, investment, technology and trade flows. These countries, as well as some others in Europe and America mentioned in previous chapters, have also exercised protectionist measures at some point in their trading relations. However, they still developed, and this may be attributed to the fact that they were not isolated, and had the chance to integrate into the global market. From this perspective, South Africa, in spite of these protectionist measures, may have progressed immensely in the economic sector, if it had the chance to actively participate in international trade earlier on, and not engaged in

just a certain degree of trading relations with Southern African states and a few others.

Being denied access to previous negotiating rounds, such as those of Uruguay and Tokyo where tariff dismantlement was the main focus of discussions, South Africa continued to enforce its relatively high tariffs and numerous import restrictions to enhance its import-substituting industrial policies. In as much as these sanctions were political, South Africa could conduct such “anti-GATT” trade policies in whatever manner it chose, regardless of GATT principles, and not be held liable since she was not a member to this treaty.

#### 5.1.2 The New Position under the WTO

With the initial steps taken by the Apartheid government to reform its trade policy and the gradual dismantling of its racist policies which culminated with the launch of the Uruguay Round in 1986, South Africa has eventually had the opportunity to participate in the Uruguay Round negotiations, and is subsequently a WTO member.<sup>86</sup> South Africa has now formally acceded to this organisation through an instrument signed by the Minister of Trade and Industry, on the 2nd. of December, 1994. It has ratified this organisation under Section 231 (4) of its 1996 interim constitution. Therefore, GATT/WTO provisions are now valid in South Africa, and this country must now conduct its trade relations in accordance with WTO requirements and international trade norms.

For South Africa to successfully change its economic policy from import substitution to export-led growth and adhere to the concept of a liberal, free market strategy, then it is imperative that entry into existing and new markets are ensured through tariff

dismantlement as well as a more systematic and uniform tariffication policy. The significance of this is clear. In addition to concluding agreements in goods and being granted market access thereby, South Africa also has now had to make further commitments to new issues such as services, trade-related investment measures and trade related intellectual property rights. Under the Textiles and Clothing Agreement for instance, where protectionism was intense as indicated earlier, this country has further accepted to reduce its end-tariff duties on textiles, that is to an equivalent of 30% on made-up products, 25% for Fabrics, 17.5% for Yarn and 10% for Fibres. All these novel issues are of a regulatory, code-of conduct nature prescribing or prohibiting certain types of non-tariff barriers such as arbitrary governmental policies pertaining to anti-dumping, subsidy, countervailing measures and customs valuation.

Generally, much has not come to light with regard to these commitments, and a reason for this is perhaps, the fact that more time is needed to assess the merits of this new world trading order, and the effects of South Africa's commitments on its economy.

It is important to note that in view of certain vital factors such as the high inflation which characterises the domestic economy, large fiscal deficit and low reserves as well as the present severe economic recession, there is the necessity that the whole process of reforming tariffs is managed with great caution, so as to avoid sudden disruptions to the economy and further large scale entrenchments.<sup>87</sup> Moreover, this is necessary, with regard to the fact that, since the 1940s and 1950s, that is during many decades, the economy of this country has thrived on protectionism, and a drastic reformation of its



economic policies without a great deal of caution may compound the existing problems of unemployment, poverty and crimewave.

### 5.1.3 The Question of South Africa's Status in the Multilateral Economic System: Developed Country or LDC?

Since its accession to the WTO, the status of South Africa in the global economy has indeed resulted in a great deal of controversy and debate. From the perspective of the GATT, this country was by far a developed one with an advanced level of industrialisation and other sectors of economic development, in comparison with South African Development Community (Hereinafter, SADC) states and other LDCs, for that matter. For R. H Thomas, South Africa, from GATT perspectives, is a developed economy. In the regional context, this country is an economic giant. Then again, if modernisation is the criterion used in assessing a country's level of development, then, South Africa does indeed appear to be a developed country.<sup>88</sup> She further provides some salient features of this country's trade patterns, in relation to her neighbours. For instance, in 1985, in the Southern African Region, it accounted for 78% of all motor vehicles (which amounts to some 40% of those in Africa), 63% of all tarred roads, 56% of all railway lines, 55% of all wheat grown, 75% of total exports and 68% of total imports. The region alone accounts for some 70% of South Africa's total exports to the continent, and approximately 20% of her global exports.<sup>89</sup>

The GATT, in the light of all these factors, contemplated according South Africa the status of a developed country, since this country would be excessively advantaged in terms of global trading relations with other SADC and LDC countries, and the problem of

trade imbalance compounded, if South Africa were to be treated on equally favourable terms as these other states.

In spite of this classification, it must be noted on the other hand when it comes to employment, income per capita, trade composition, income distribution and human resource management, South Africa is closer to developing countries than developed countries, for as already pointed out, isolation impeded her progress. Hence, a 1994 World Bank Report has indicated that South Africa's per capita income in 1992 was 2,670, which placed it right at the bottom of the upper middle income group of countries.<sup>90</sup> In this report, the following ACP countries include those whose GNP surpassed that of South Africa: Mauritius (\$ 2,700), Botswana (\$ 2,790), St. Lucia (\$ 2,920), Trinidad and Tobago (\$3,940). Moreover, in terms of UNDP's Human Development index (1992), as much as thirty developing countries are placed above South Africa, including some thirteen African, Caribbean and Pacific countries. There are serious complications of malnutrition and adult illiteracy currently facing the country, which makes it worse off than certain LDCs. For example, in 1985, 43% of black children under the age of five years, living in the rural areas of South Africa were underweight and 28% of those living in urban areas were under the same condition. This country's neighbours, apart from the war ravaged areas of Angola and Mozambique, are all better off than South Africa in this sense. Then again, 30% of the black adult population is illiterate and a further 30% are functionally illiterate. The figures for Tanzania, Botswana, Zimbabwe and Zambia are 9%, 26%, 27% and 33% respectively.<sup>91</sup> This signifies that the black community in South Africa is equally as disadvantaged as the

black population of neighbouring states, in terms of necessary educational skills for the development of economic growth.

Unemployment is rife, and as much as seven million black people have been said to be homeless. In addition to these problems, this country, just like many LDCs, exhibits worrying patterns of environmental pollution. In Gauteng, Eastern Transvaal, Merbank and Natal, for example, the clustering of many factories and mines has resulted in air pollution and the consequent respiratory and sinus problems, especially, amongst children.<sup>92</sup> The infant mortality rate has thus been estimated to be very high. It has been predicted that growth in the agricultural sector, for instance, may decrease by 10% in the near future.<sup>93</sup> So that from this point of view, merely considering this country as developed because of its trade performance in comparison with other LDCs, would not be enough, for just like this group of countries, there are grave problems of economic and sustainable development, which must be addressed.

With these contradictory issues and the dualistic nature of this country's economy, it was very difficult to ascertain the status of this country when it became involved in global economic trade. However, the WTO granted South Africa LDC status thereby permitting her to derive LDC benefits from multilateral trade. A balance seems to have been struck, though, in according this country this status, because these benefits are specific and not general. This is because, South Africa's preferential treatment will be on an ad hoc, and sector to sector basis, depending on the peculiar circumstances of each case and not as a general entitlement, as in the case of other LDCs.

Similarly, the extension of GSP preferences by some of this country's trading partners

such as USA and the EU, to South Africa and its partial membership into the Lome Convention (which exists as a basis of trading relations between states of the EU and those of Africa, the Pacific and Carribean region) require that South Africa be treated as a developing country which qualifies for special trade treatment in certain circumstances. For instance, at the moment, the EU has granted this country funding which is to be utilised solely for its Reconstruction and Development programme.

The significance of this status under all these trading arrangements is that, South Africa will not be granted all the tariff concessions which are given to less developed African, Carribean and Pacific countries by the more powerful countries in the course of trading activities. A harmonisation could be seen to have been realised regarding the diametrically opposed points of commercial viability on the one hand and economic handicap on the other.

## **5.2 Implications of the WTO for South Africa**

An analysis of South Africa's accession to the WTO reveals both positive and negative effects on its economy, just as in the case of other developing countries.

### **5.2.1 Multilateral Market Access**

After so many years of economic retrogression due to political ostracization from the world market, South Africa's membership to the WTO obviously enables her to normalise trading relations with a wide variety of countries and in diverse sectors, in the international sphere. The significance of this is clear. There is the likelihood that this country will make substantial gains not only in her traditional markets of Europe and

North America, but also in new ones such as Asia, Latin America and possibly, Central and eastern Europe.<sup>94</sup> Also, the granting of preferences is a far reaching step in the development of South Africa's economy, especially when contrasted with its financial setbacks which resulted from her marginalisation of the globalisation process. It is hoped that with a change in these circumstances, South Africa profit from the free market principle , and possibly tackle its economic problems. With the liberalisation of trade in services, it is hoped that this country, like other developing countries, will be able to make use of technological transfers from the first world, and get access to their markets, without encumbrances and protectionist measures.

### 5.2.3 Reformation of Economic Policy

Adhering to the principle of liberalism in trade and abandoning old protectionist measures obviously suggest that there must be vicissitudes in South Africa's national economic policy. A National Economic Forum, consisting of representatives from parts of the business sector, was established in 1992, to assist the government in finding measures which would, through the promotion of these aims, lead to an improvement of South Africa's economic policy. World Bank reports have confirmed that South Africa's government has lately embarked on a reformation of its trade policy which aims at "simplification, greater transparency, more uniform tariff levels, greater stability, more effective administration, and very importantly, the reduction of the anti-export bias".<sup>95</sup>

The validity of this claim is seen, for instance, in a recent report made by the Industrial

Development Corporation, to the government. Here, the former expressed its desire to move towards a market oriented economy. The Board on Tariffs and Trade, for its part, has departed from its system of formal duties, thereby adhering to the WTO Agreement on Anti-Dumping and Countervailing Measures (in 1992 as a first step in this process), which require that thorough procedural requirements be met before duties are imposed on foreign firms in circumstances of alleged dumping practices (which are supposed to have been committed by these firms), so as to ensure that they are not discriminated against.

The Trade Policy Review Mechanism of 2nd. June 1993 states, with regard to these reformatations, that in the agricultural sector, a more market-related agricultural policy is being followed at the moment.<sup>96</sup> Here, a series of export assistance schemes which were introduced during the Apartheid era have been considered evil. For example, the General Export Incentive Scheme set up in the 1980s, to subsidise farmers' exports, has been deemed to be inconsistent with the GATT, and has been subsequently removed. However, remodelling national policy to suit GATT principles does not mean rejecting all previous policies. So that, there is no intention to abolish the export Marketing Assistance Scheme (EMA), for instance, which is believed to be consistent with the General Agreement. Uncertainties still prevail in certain areas such as the Export Processing Zone (EPZ) where no final decision has been made.

Further intent and steps to attain the objective of market liberalisation could be perceived from the announcement of the Director General of Trade and Industry in March 1993, which stated that government's aims of tackling education, training, unemployment, foreign investment and development, through the amelioration of macro-economic

policies of the country. The Import Substitution Policy was to be abandoned, as this discriminated against foreign exporters, and ensured protectionism of South African firms, whose products were as indicated, non-competitive. Other policies relating to the import surcharge,<sup>97</sup> for instance, were to be removed by the Finance Industry, because even though this mechanism was supposed to safeguard the balance of payments and was not meant to discriminate against foreign exporters or protect South African firms, it did in fact have this result, and was thus abhorred by the GATT.

Acceding to the WTO has thus signified massive change in the economic policy and it is hoped that these will be to the benefit of the country. However, with regard to the tasks that these obligations entail, these changes in national policies will be gradually and cautiously effected, as has been advised by South Africa's trading partners, lest a drastic change in economic policy negatively affects the country's economy.

#### 5.2.4 National Institutional Implications

In conformity with the comprehensive multilateral treaty, the South African government, like both developing and developed countries, has had to ensure that at the local level, legislation is implemented, as shown already. Like Australia, New Zealand and a lot of these countries, the cost and challenges of setting up these institutions, the need for human resources and information management must not be lost sight of. In the case of South Africa, this problem has double effect, for the whole phenomenon is all very new. More personnel is needed and a more effective co-operation required between South Africa's Department of Trade and Industry. With South Africa's qualification for certain forms of concessions and technical assistance, coupled with the other potential gains of

world trade, these problems, it is hoped, could be gradually overcome. This whole activity could possibly lead to the creation of a considerable number of job opportunities in the trading and industry sector, and this would be particularly useful to this country which currently faces unemployment problems.

The suggestion for South Africa to adopt these policies with due regard to the example set up by Australia and New Zealand, does not necessarily imply that this should be done slavishly, but that certain examples could perhaps be borrowed from these countries' practice. It has been observed that before the 1980s, Australia focused on exporting only primary products, notably, wool, wheat and coal to particular markets-Japan, Europe and the US.<sup>98</sup> These primary products accounted for 77% of Australia's exports and on the whole, only 13% of Australia's products were exported to these limited amount of foreign markets. So that Australia is also seen to have exhibited patterns of anti-export bias at a point in time. However, there has been a massive transformation as from the 1980s as this country has embarked on tremendous integration with many foreign firms. In 1983 for instance, Australia's government relaxed controls on international trade flows, the entry of foreign banks and set up an Australian stock exchange. By July of this year, it is estimated that the general level of tariffs will be at a maximum level of 5%, and in the last decade, this country is said to be the fourteenth country out of forty eight, in terms of competitiveness of the forty eight leading industrial economies.<sup>99</sup>

So that, even though the process of shifting from a protectionist attitude towards a free market strategy is seemingly complicated and far-fetched, its results are indeed rewarding. South Africa could progressively model some of its trade policies on that of



Australia, in order to acquire greater economic gains from its commercial activities with  
The. outside world.

## **CHAPTER 6: CONCLUSION**

The WTO has definitely made a lot of improvements on the GATT, which it has substituted. Many new areas of trade have been covered and lots of concessions given to developing countries, by their more powerful trading partners. This new trading regime is definitely thus important from the perspectives of developing countries, for it appears to aim at improving trade and economic prospects of LDCs, as enunciated in its principles, and not to boost developed countries' financial gains in global trade, at the expense of developing countries. This it has done, through the granting of tariff concessions and ensuring market accessibility from the third world to the first world. The fundamental MFN principle is at some stage, even departed from, in order to ensure that LDCs are able to benefit from world trade, just as their trading partners in the first world. Trade liberalisation is also promoted hereby.

However, it may be said that the interests of these poor countries, should be enforced during negotiations, so that they are not compelled to consent to the more powerful, with regard to items on the trade agenda. They must be given a chance to maximise opportunities from trade in diverse sectors, such as agriculture (which is a main source of export to them) and services (which is a new trading sector to them). There are also subtle implications that the LDCs may not completely realise these gains, as the scope of the WTO is rather bewildering and the terms onerous for these countries, for example. In addition to this, third world countries are not without problems of their own. Thus, even though the new trade order sounds fine theoretically, the impediments to an absolutely positive impact on these countries, as it is often portrayed, must not be lost sight of.

For the LDCs on their part, with the granting of concessions and leveling of plain fields in international trade, one effective means of really realising the resultant trade gains would be a tremendous improvement in the situation at home. For it would be meaningless to expect all manner of concessions to improve a country's economic situation when in fact, disorganisation, violence and political instability are rampant at home. So that there are a lot of efforts to be made by the LDCs in order to help themselves.

For South Africa which has joined the world trading order, this could be a lesson for future progress. To begin with: political stability is essential and perhaps, a pre-requisite for sound macroeconomic policies. It also ensures an effectively positive materialisation of economic relations with other countries. Furthermore, this country, which intends gaining access to World Bank and IMF loans, from LDCs' experience, should be wary of all kinds of terms which accompany these loans. These terms, it is claimed, are sometimes onerous, and have in the past compounded the financial constraints suffered by these LDCs, and have not improved their financial status.

Nonetheless, it is a bit too early to assess the progress that this organisation has made on developing countries. Presumably, it may be beneficial to LDCs if most or all of these obstacles are overcome. To a very large extent then, LDCs would reap benefits from WTO, and this organisation could be perceived as being advantageous and not detrimental to them in the long term, even though it may appear negative in the short term.

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